

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DEMETRIOUS STEWART,

Petitioner,

vs.

ROBERT LEGRAND, et al.,

Respondents.

3:13-cv-00098-LRH-WGC

ORDER

Petitioner has filed a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (ECF #1). However, petitioner has failed to submit an application to proceed *in forma pauperis* or pay the filing fee. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2.

Thus, the present action will be dismissed without prejudice to the filing of a new petition in a new action with either the full filing fee or an application to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six months and a properly executed financial certificate.

It does not appear from the papers presented that a dismissal without prejudice will materially affect a later analysis of any timeliness issue with regard to a promptly filed new action.¹

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With regard to timeliness, in this petition, petitioner states that he is challenging a judgment of conviction dated December 19, 2006, and that the Nevada Supreme Court decided his appeal from the denial of his post-conviction petition for relief or petition for writ of habeas corpus on February 1, 2013 (ECF #1-1). Thus it does not appear that a dismissal of

(continued...)

1 **IT IS THEREFORE ORDERED** that this action is **DISMISSED** without prejudice to the
2 filing of a new petition in a new action with either the full filing fee or a properly completed application
3 form to proceed *in forma pauperis*.

4 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as jurists of
5 reason would not find the court's dismissal of this improperly commenced action without prejudice to
6 be debatable or incorrect.

7 **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies each of an
8 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital Section 2254
9 habeas petition form, one copy of the instructions for each form, and a copy of the papers that he
10 submitted in this action.

11 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and
12 close this case.

13 DATED this 14th day of March, 2013.



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16 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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26 ¹(...continued)

27 the present petition without prejudice will materially affect an analysis of any timeliness or exhaustion issue as to a promptly
28 filed later petition. Nor does it appear from the available records that a dismissal of this improperly commenced action
 without prejudice necessarily will be with prejudice in effect. Petitioner at all times remains responsible for properly
 exhausting his claims, for calculating the running of the federal limitation period as applied to his case, and for properly
 commencing a timely-filed federal habeas action.